

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Corr Wireless	)
Communications, LLC, Request for Review	) CC Docket 96-45
of a Competitive Eligible Telecom-	)
munications Carrier High-Cost Support	)
Decision of the Universal Service Administrative	) WC Docket 05-337
Company	)

**COMMENTS OF VERIZON/ALLTEL  
MANAGEMENT TRUST**

Pursuant to the Public Notice of the Federal Communications Commission (“FCC” or “Commission”),<sup>1</sup> the Management Trust (“the Trust”) for the properties to be divested in connection with the Verizon Wireless (“Verizon”) merger with Alltel Communications, LLC (“Alltel”) respectfully submits these comments in support of the appeal of Corr Wireless Communications, LLC (“Corr”). Specifically, the Trust urges the Commission to reverse the appealed decision of the Universal Service Administration Corporation (the “Administrator”), because the Administrator has misinterpreted a reference in the Verizon-Alltel Merger Order<sup>2</sup> to a statement by Verizon as somehow changing the Commission’s formally-established Interim Cap formula under which the amount of the each state’s capped pool remains constant regardless of the number of

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<sup>1</sup> Public Notice, Federal Communications Commission, *Comment Sought on Corr Wireless Communications, LLC, Request for Review of a Competitive Eligible Telecommunications Carrier High-Cost Support Decision of the Universal Service Administrative Company*, WC Docket No. 05-337, CC Docket No. 96-45 (rel. Apr. 9, 2009).

<sup>2</sup> *Applications of Celco Partnership d/b/a Verizon and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95 (rel. Nov. 10, 2008) (“*Merger Order*”).

participants. The Commission should confirm for the Administrator that there was no intent to change the Commission's interim caps, and that therefore the caps will remain the same and any High Cost support funds relinquished by Verizon will be available for distribution under those caps.

### **INTEREST OF THE TRUST**

As of January 9, 2009 Cellco Partnership d/b/a Verizon Wireless acquired Alltel Corporation and its subsidiaries including Alltel Communications, LLC. In connection with the merger approval, the FCC, the U.S. Department of Justice, and several plaintiff states required Verizon to divest properties in 105 Cellular Market Areas ("CMA").<sup>3</sup> An independent Management Trust is responsible for managing these properties until the divestiture occurs, and these comments are being filed on behalf of that Trust.

In a November 3, 2008 *Ex Parte* letter submitted by Verizon in connection with the proposed merger, Verizon committed to accept a phase-down of its High Cost support, "for any properties which Verizon retains" after the divestiture, over a five-year period following closing of the merger,<sup>4</sup> and the *Merger Order* conditioned approval of the proposed transaction on this voluntary commitment by Verizon.<sup>5</sup> The properties under management of the Trust are by definition not being retained by Verizon and thus are not subject to the phase-down of High Cost support, and so continue to be entitled to participate in High Cost programs.

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<sup>3</sup> *Id.* ¶ 163.

<sup>4</sup> Letter from John T. Scott, III to Marlene H. Dortch, Secretary, FCC, Re: Applications of Atlantis Holdings LLC and Cellco Partnership d/b/a Verizon Wireless for Transfer of Control, WT Docket No. 08-95, at 1 (Nov. 3, 2008) ("*Ex Parte* Letter").

<sup>5</sup> *Merger Order* ¶ 197.

## DISCUSSION

As Corr explains in its Appeal<sup>6</sup>, Corr is seeking FCC review of a ruling by the Administrator that the impact of Verizon's phase-down is a reduction of the total High Cost support amounts available under the Interim Cap. The Administrator's ruling is based on the Administrator's interpretation of the *Merger Order*. Corr states that the "Administrator indicates that the Verizon and ALLTEL Merger Order 'specifically states that the reduction in payments to Verizon and ALLTEL will not result in an increase in High Cost Support payments to other CETCs,' citing Paragraph 196 of the Order." Thus, the Verizon reductions do not, according to the Administrator, "'free up' additional dollars for other CETCs in any jurisdiction."<sup>7</sup>

The Trust agrees with Corr that the Administrator misinterpreted the *Merger Order* to be a Commission mandate for this significant change in the established Commission rules for the Interim Cap. Paragraph 196 of the *Merger Order*, which the Administrator specifically relies on, is simply the Commission's summary of the *Ex Parte* letter filed by Verizon on November 3, 2008, in which Verizon voluntarily committed to the phase-down of High Cost support over the next five years. That part of the *Merger Order* states merely that "[w]ith regard to this phase down of competitive ETC high cost support, Verizon Wireless states its understanding that the reduction in payments to Verizon Wireless will not result in an increase in high cost payments to other competitive ETCs."<sup>8</sup>

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<sup>6</sup> *In the Matter of Request for Review By Corr Wireless Communications, LLC of the Decision of Universal Service Administrator*, CC Docket No. 96-45, WC Docket No. 05-337 (Mar. 11, 2009) (hereinafter "Appeal").

<sup>7</sup> Appeal at 4-5.

<sup>8</sup> *Merger Order* ¶ 196.

As Corr points out, this description of Verizon's statement about its understanding cannot properly be the basis for the Administrator to conclude that the Commission determined that the Interim Cap amounts should be reduced. The Administrator points to nothing in the *Merger Order* that suggests that the Commission itself adopted, or even considered or analyzed, this issue. Clearly, any understandings stated in a Verizon letter are only those of Verizon and not the Commission. If the Commission had intended to enact a major change in its official Interim Cap formula, it should (and undoubtedly would) have stated clearly that it intended such a change, and it likely would have first followed proper administrative process within the context of the *Interim Cap Order*<sup>9</sup> proceeding itself.

In the *Interim Cap Order*, the Commission capped the level of annual High Cost support available to ETCs in any given state at the level of total monthly support in that state as of March 2008, multiplied by twelve months.<sup>10</sup> In that Order, the Commission explained that the cap does not restrict the number of ETCs that may receive support from the capped pool and that the cap amount remains the same no matter how many or how few companies participate.<sup>11</sup> The Administrator's opinion that a reference to one party's letter in the *Merger Order* can materially amend a rule adopted by the Commission in the *Interim Cap Order* following a notice-and-comment rulemaking

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<sup>9</sup> *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45 (rel. May 1, 2008) ("*Interim Cap Order*").

<sup>10</sup> *Interim Cap Order* ¶ 38.

<sup>11</sup> *Interim Cap Order* ¶¶ 28, 39.

proceeding<sup>12</sup> is clearly in error. If not reversed, this error will reduce the capped level of High Cost support available to CETCs, including the Trust properties, in violation of Commission rules. Indeed, Commission affirmance of the Administrator effectively would constitute the amendment of a rulemaking order in violation of the procedural requirements of the Administrative Procedures Act.<sup>13</sup>

### **CONCLUSION**

For the reasons stated above, the Trust supports Corr's request that the Commission reverse the Administrator's interpretation and direct the Administrator not to reduce the Caps established pursuant to the Commission's rule based on Verizon's relinquishment of its High Cost claims.

Respectfully submitted,

/s/ W. Stephen Cannon  
W. Stephen Cannon  
Constantine Cannon LLP  
1627 Eye Street, NW  
Washington, D.C. 20006

*Trustee for the Verizon/Alltel Management Trust*

Tessie Kentner  
1 Allied Drive  
Little Rock, AR 72202

*Counsel for the Verizon/Alltel Management Trust*

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<sup>12</sup> *In the Matter of Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*; CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, (rel. Dec. 9, 2005).

<sup>13</sup> 5 U.S.C. 553.

## CERTIFICATE OF SERVICE

I, Patricia O'Keefe, with the law firm of Constantine Cannon LLP, hereby state that a true copy of the foregoing was sent by first class mail, postage prepaid, this 11<sup>th</sup> day of May, 2009, to the following:

Donald J. Evans  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209

*Counsel for Corr Wireless Communications, LLC*

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Gary Seigel  
Telecommunications Access policy Div.  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, N.W.  
Room 5-C408  
Washington, DC 20554

Antoinette Steven  
Telecommunications Access Policy Div.  
Wireline Competition Bureau  
445 12<sup>th</sup> Street, S.W.  
Room 5-B521  
Washington, DC 20554

Best Copy and Printing, Inc.  
445 12<sup>th</sup> Street, S.W.  
Room CY-B402  
Washington, DC 20554

  
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Patricia O'Keefe